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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/736,992 | 12/17/2003 | Doris M. Ikle | 07151.0004-01 | 6436 |

22852 7590 10/14/2005

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| EXAMINER | |
|---|---|
| PUROL, DAVID M | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3634 | |

DATE MAILED: 10/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/736,992 | IKLE, DORIS M. | |
| | Examiner | Art Unit | |
| | David M. Purol | 3634 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *11 July 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *2-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. On page 1, the paragraph following line 1 is to be amended so as to update the status of the listed Application.

Correction is required.

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees.

See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 2-29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claims of U.S. Patent No. 6,666,251. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are drawn to a single inventive concept.

3. Claims 2-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is not known if the applicant is claiming the shade supporting plates in combination with the shade system. Claim 27, lines 6-7 recite "mountable between a pair of shade supporting plates" which merely refers to the shade supporting plates in functional terms. However, lines 11-12 recites "a position of each of the shade supporting plates in its respective end cap being laterally adjustable" which implies that the shade supporting plates are elements of the claimed shade system. The dependent claims further recite details of the shade supporting plates further implying that the shade supporting plates are elements of the claimed shade system. For example: claim 17, line 2; claim 29, lines 3,7-9. Elements of an invention to which it is necessary to refer in order to define other elements of the invention are to be positively included in the claims.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 27,28,2-8,12,16-18,21,23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Restle et al in view of Nutter. Restle et al disclose a shade system comprising shades 20,21, rollers 18,19 mounted between support plates, side rails 8,29, edge seals 31, means for sealing 32,27, a valance 16. While Restle et al do not disclose the use of an end cap, Nutter discloses a shade system comprising end caps 6 configured to receive support plates 14, wherein, to incorporate this teaching into the shade system of Restle et al for the purpose of accommodating windows of various

sizes would have been obvious to one of ordinary skill in the art. Regarding the shades as being treated with an ultraviolet inhibitor, a reflective solar tint, or as having a plurality of bonded layers, Official Notice is hereby given that the selection of a known material based upon its suitability for the intended use would have been obvious to one of ordinary skill in the art.

5. Claims 9-11,13,14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Restle et al in view of Nutter as applied to claims 27,28,2-8,12,16-18,21,23-25 above, and further in view of Blackmon. While Restle et al do not disclose the use of telescopic side rails cooperating with guide blocks, Blackmon discloses a shade system comprising telescopic side rails 26a,b,c cooperating with guide blocks 95, wherein, to incorporate this teaching into the shade system of Restle et al, as modified by Nutter, for the purpose of accommodating windows of various sizes would have been obvious to one of ordinary skill in the art.

6. Claims 19,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Restle et al in view of Nutter as applied to claims 27,28,2-8,12,16-18,21,23-25 above, and further in view of Marquez. While Restle et al do not disclose the use of pressure sensitive adhesive, Marquez discloses a shade system which employs the use of pressure sensitive adhesive 32, wherein, to incorporate this teaching into the shade system of Restle, as modified by Nutter, for its explicit purpose of fastening would have been obvious to one of ordinary skill in the art.

7. Claims 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Restle et al in view of Nutter as applied to claims 27,28,2-8,12,16-18,21,23-25 above, and further in view of Keller et al. While Restle et al do not disclose the shade system as comprising a channel-shaped clip overlying a hem and a batten, Keller et al disclose a shade system comprising a channel-shaped clip 48,50,56 overlying a hem and a batten 52, wherein, to incorporate this teaching into the shade system of Restle et al, as modified by Nutter, for the purpose of rigidifying the end of the shade so as to facilitate its movement would have been obvious to one of ordinary skill in the art.

8. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Restle et al in view of Nutter as applied to claims 27,28,2-8,12,16-18,21,23-25 above, and further in view of Casiday. While Restle et al do not disclose the at least one transparent shade as being first and second transparent shades, Casiday discloses a shade system comprising first and second transparent shades 6,6, wherein, to incorporate this teaching into the shade system of Restle et al, as modified by Nutter, for the purpose of increasing the insulating properties of the shade system would have been obvious to one of ordinary skill in the art.

9. The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Coleman, Tedeschi.

10. Applicant's amendment clarifying the scope of claims 2-26 and the presentation of new claims 27-29 necessitated the new grounds of rejection presented in this Office

action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication should be directed to David M. Purol at telephone number (571) 272-6833.

David M Purol
**Primary Examiner**
**Art Unit 3634**

DMP
(571) 272-6833
October 12, 2005